



September 16, 1999

The Honorable John Whitmire
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

OR99-2587

Dear Senator Whitmire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127329.

Senator Whitmire received requests for any records received or produced by the senator's staff between January 1998 and June 1999 that pertain to Service Corporation International and the Texas Funeral Service Commission. You have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.106, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that records of communications between citizens and a legislative member, submitted as Exhibit B and pages 7-9 of Exhibit C, are confidential under sections 306.003 and 306.004 of the Government Code. Open Records Decision No. 648 (1996) addresses the application of these confidentiality provisions. Sections 306.003 and 306.004 of the Government Code work together to provide a measure of confidentiality for records of communications between citizens and members of the legislature. Both statutes grant members of the legislature the discretion to release information covered by the statutes.

Section 306.003 provides as follows:

- (a) Records of a member of the legislature or the lieutenant governor that are composed exclusively of memoranda of communications with residents of this state and of personal information concerning the person communicating with the member or lieutenant

governor are confidential. However, the member or the lieutenant governor may disclose all or a part of a record to which this subsection applies, and that disclosure does not violate the law of this state.

(b) The method used to store or maintain a record covered by Subsection (a) does not affect the confidentiality of the record.

The confidentiality provision in section 306.003(a) applies to the records of a member or of the lieutenant governor consisting of two kinds of information: 1) records of memoranda of communications with Texas residents and 2) records of personal information about the person communicating with the legislator or lieutenant governor. Thus, "personal information" about a person communicating with a legislator or the lieutenant governor is within section 306.003(a) even if it is not recorded in a memorandum prepared by the member. While section 306.003(a) deems confidential the communications subject to the provision, it gives a legislator the discretion to disclose all or part of such record. Gov't Code § 306.003(a).

While section 306.003 applies to legislative records of memoranda of communications and records of a correspondent's personal information, section 306.004 refers to the communications themselves. Section 306.004 provides as follows:

(a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of *communications of citizens* with a member of the legislature or the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded *communication from a citizen* of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:

(1) the citizen expressly or by clear implication authorizes the disclosure;

(2) the communication is of a type that is expressly authorized by statute to be disclosed; or

(3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

(b) This section does not apply to a communication to a member of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity.

(c) A member or the lieutenant governor may elect to disclose all or part of a communication to which this section applies, and that disclosure does not violate the law of this state. [Emphasis added.]

A "communication" includes "conversation, correspondence, and electronic communication." Gov't Code § 306.001. The communication is not subject to public disclosure absent one of the three conditions stated in section 306.004(a). As with the records within section 306.003(a), a legislator has discretion to disclose all or part of the records subject to section 306.004(a).

We have reviewed the information and conclude that Exhibit B and pages 7-9 of Exhibit C are confidential under sections 306.003 and 306.004 as memoranda of the senator's communications with residents of the state, personal information concerning the person communicating with the senator, and citizens' communications with the senator. Access to the communications is governed by the provisions of section 306.004.

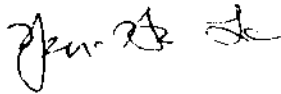
Next, you contend that section 552.107 excepts pages 16 - 44 of Exhibit C from public disclosure. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have reviewed pages 16-44 of Exhibit C and have marked the information that is excepted from disclosure by section 552.107. You may not withhold the remaining information under section 552.107.

Lastly, we consider whether section 552.106 excepts the remaining information in Exhibit C from public disclosure, including the information not excepted from disclosure by section 552.107. Section 552.106 protects drafts and working papers involved in the preparation of proposed legislation. The purpose of the exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the legislative body and to thereby protect the internal "deliberative" or policy-making processes of a

governmental body. Open Records Decision No. 460 (1987). Section 552.106 does not except purely factual material; rather, it excepts only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation. Section 552.106 applies only to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. *Id.* We have reviewed the submitted information and marked the information you may withhold under section 552.106 of the Government Code. The remaining information in Exhibit C must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 127329

Encl.: Marked documents

cc: Ms. Annys Shin
Senior Associate
The Center for Public Integrity
910 17th Street, NW, 7th Floor
Washington, D.C. 20006
(w/o enclosures)